

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 2, 2005

IN RE:

**APPLICATION OF BELL SOUTH LONG DISTANCE,
INC. FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE
FACILITIES-BASED INTEREXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN THE
STATE OF TENNESSEE**

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**DOCKET NO.
05-00137**

**INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on July 20, 2005, to consider the *Petition of BellSouth Long Distance, Inc. to Amend its Certificate of Public Convenience and Necessity to Provide Facilities-Based Interexchange Service* (the "*Application*") filed by BellSouth Long Distance, Inc. ("BSLD") on May 6, 2005. BSLD has an existing certificate of public convenience and necessity ("CCN") to provide resold interLATA long distance services in Tennessee.¹ In its *Application*, BSLD seeks to amend this existing CCN and obtain authority to provide facilities-based operator and interexchange telecommunications services within the State of Tennessee.

¹ See *In re Application of BellSouth Long Distance, Inc. to Expand Its Certificate of Convenience and Necessity to Provide Resold InterLATA Service in Tennessee*, TRA Docket No. 02-01169, *Order Approving Modification of Certificate of Public Convenience and Necessity* (January 28, 2003)

Legal Standard for Granting Certificate of Public Convenience and Necessity

BSLD's *Application* was made pursuant to, and was considered in light of, the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (2004), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area

outside its service area existing on June 6, 1995.²

Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

The July 20, 2005 Hearing

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on July 8, 2005. No persons sought intervention prior to or during the Hearing. At the Hearing held on July 20, 2005, Mr. Hamilton "Bob" Gray, BSLD's Network Vice-President, participated in the Hearing, and was subject to examination by the Hearing Officer. Guy M. Hicks, Esq. appeared on behalf of BSLD. At the Hearing, BSLD orally agreed to amend its *Application* to request a new CCN to provide facilities-based operator and interexchange services, rather than pursuing its original request in the *Application* to amend BSLD's current CCN in TRA Docket No. 02-01169. Upon BSLD's conclusion of the presentation of its proof, the Hearing Officer granted BellSouth Long Distance, Inc.'s *Application*, as amended at the

² Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d) *In the Matter of AVR, L P d/b/a Hyperion of Tennessee, L P Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) (2004) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 FCC Rcd 11,064 (May 27, 1999), (Memorandum Opinion and Order) 16 FCC Rcd 1247 (January 8, 2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. See *In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, L L C to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

Hearing to request a new CCN, based upon the following findings of fact and conclusions of law:

I. BellSouth Long Distance, Inc.'s Qualifications

1. BSLD is a corporation originally organized under the laws of the State of Delaware on March 13, 1996, and was qualified to transact business in the State of Tennessee on August 29, 1996.

2. The complete street address of BSLD's corporate office is 400 Perimeter Center Terrace, Suite 400, Atlanta, Georgia 30346. The telephone number is (770) 352-3000 and the facsimile number is (678) 443-3470.

3. The *Application* and supporting documentary information existing in the record indicate that BSLD has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, BSLD's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. BSLD has the necessary capital and financial ability to provide the services it proposes to offer.

5. BSLD has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. Proposed Services

BSLD intends to provide competing facilities-based operator and interexchange telecommunications services within the State of Tennessee.³

III. Permitting Competition to Serve the Public Convenience and Necessity

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of BSLD's *Application*, as amended, would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program

BSLD has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

V. Compliance with Tennessee's County-Wide Calling Requirements

BSLD has indicated its awareness of, and its obligation to comply with, the requirements of county-wide calling as set forth in Tenn. Code Ann. § 65-21-114 (2004).

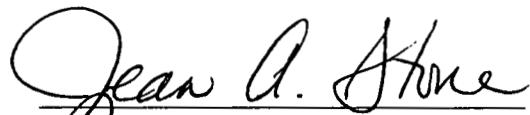
³ In addition to its existing CCN to provide resold interLATA long distance services granted in TRA Docket No. 02-01169, BSLD has an existing CCN to provide facilities-based competing local exchange service granted in TRA Docket No. 03-00602. See *In re Petition of BellSouth Long Distance, Inc. to Provide Competing Local Telecommunications Services*, TRA Docket No. 03-00602, *Order Granting Certificate of Public Convenience and Necessity* (February 18, 2005). Based upon BSLD's agreement to amend the *Application* to request a new CCN, neither of its existing CCNs is modified by this Order.

IT IS THEREFORE ORDERED THAT:

1 The *Petition of BellSouth Long Distance, Inc. to Amend its Certificate of Public Convenience and Necessity to Provide Facilities-Based Interexchange Service*, as amended at the Hearing to request a new CCN, is approved;

2. BellSouth Long Distance, Inc. is granted a Certificate of Public Convenience and Necessity to provide facilities-based operator and interexchange telecommunications services within the State of Tennessee; and

3 Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.



Jean A. Stone, Hearing Officer